

QUESTIONNAIRE FOR DISTRICT JUDGE AND MAGISTRATE INTERVIEWS

RESPONSE OF:
MAGISTRATE JUDGE PATRICIA J. GORENCE

I. Commencement of Action and General Procedures

A. Initial court review upon filing? (Removal review; jurisdictional review; U.S. as litigant.)

When a civil action is commenced, the case is randomly assigned to either a district judge or a magistrate judge. In any case assigned to Magistrate Judge Gorence, the matter is initially reviewed to determine that court has subject matter jurisdiction.

B. Scheduling conference procedures. (When, what format, what forms used for scheduling first conferences and pretrial conferences?)

In general, shortly after the time for completion of mandatory discovery, Magistrate Judge Gorence conducts a Rule 16 scheduling conference at which time a case management schedule is established. Prior to the Rule 16 conference, parties are sent a letter informing them of the format for the conference. Parties are required to provide information set forth in Local Rule 7.07. Depending upon the case, the court may also conduct subsequent status conferences as necessary.

Trial dates are generally set after the resolution of any dispositive motions. The magistrate judge will work with the parties in scheduling trial dates. However, once a firm trial date is set in a civil action, it will be changed only under extraordinary circumstances.

C. Telephone conference calls?

Initial scheduling conferences are conducted either in chambers or by telephone, depending largely upon where counsel are located. Brief hearings on non-dispositive motions, such as discovery disputes, are generally conducted by telephone.

D. Courtroom protocol. (Where counsel tables are positioned, whether to stand when addressing the Court; tardiness; scheduling conflicts; side-bar conferences; request to approach witness, marking and handling of exhibits, use of computers, video exhibits, CD-ROMS, etc.)

Proceedings start at the scheduled time. Counsel should remain at counsel table when questioning witnesses. If there is a need to approach the witness, counsel should request permission from the court. During jury trials, side-bar conferences are not favored.

Counsel must mark and number their own exhibits prior to the hearing or trial.

Counsel are required to provide a list of exhibits in a standard format to the court and opposing counsel prior to any complex hearing or prior to trial.

E. Procedures for resolving scheduling conflicts. (Trial dates, motion dates; how and when brought to Court's attention; what grounds valid for rescheduling?)

Because counsel are consulted in setting trial dates, they are not rescheduled except in extraordinary circumstances. The court will try to accommodate other scheduling conflicts. The party with the conflict should initially discuss the problem with opposing counsel to ascertain that party's position on the rescheduling request. Counsel should then telephone the court's chambers.

F. Practice re assignments and references to magistrates.

Civil cases are assigned either to a district judge or a magistrate judge.

Regardless of the assignment, a consent to proceed before magistrate judge form is sent to the parties which must be returned to the Clerk of Court within 20 days. If the case is assigned to a district judge and the parties consent, the assigned district judge issues an order transferring the case to the magistrate judge whose name appears on the consent form. Consent to jurisdiction of the magistrate judge can occur at any time after commencement of the lawsuit as long as it is approved by the assigned district judge.

If the case is initially assigned to a magistrate judge, the magistrate judge is responsible for all pretrial processing regardless of whether the parties consent. When a dispositive motion is filed in a non-consent case assigned to a magistrate judge, the assigned magistrate judge issues a report and recommendation. The case is sent to the Clerk of Court for random assignment to a district judge who reviews the recommendation and issues a decision. If the decision is not case dispositive and if the pretrial processing is not completed, the district judge returns the case to the magistrate judge who oversees completion of pretrial matters.

At the conclusion of the pretrial processing, if the parties have not consented to magistrate judge jurisdiction, the case is returned to the Clerk of Court for random assignment to a district judge unless a district judge was previously designated. If all parties have consented, the case remains with the assigned magistrate judge for final resolution.

G. ADR procedures.

Alternative dispute resolution is encouraged. Court is available for settlement conferences/mediation. See Section VII A.

II. Civil Law and Motion Procedures

A. Days, times for calendar (what does the judge require in terms of advance notice to the court of motions to be presented?).

No set motion date. Motions generally are decided on the parties' written briefs.

Court may hear brief oral argument (generally by telephone) under Local Rule 6.07 procedure for non-dispositive motions. A party filing a Rule 6.07 motion should indicate when opposing counsel will file a letter response (generally within seven days). The court will then schedule oral argument if deemed necessary.

B. Procedures re scheduling. (Call Judge's clerk or law clerk first to set? Resetting on Court's own motion? Short matters called first? Will any orders on motions be entered without court appearance? What types of motions? How do lawyers determine whether an appearance is required?)

See IIA above.

C. Procedures re obtaining orders shortening time. (Court or magistrate; need for personal appearance by attorney; ex parte vs. stipulated; notice to opposing counsel?)

If a matter is to be rescheduled, counsel should initially attempt to reach a stipulation with the opposing party. Counsel should then contact the court's chambers.

D. Calendaring TROs, preliminary injunction hearings, contempt hearings. (What arrangements required; practice re allowing evidentiary hearings?)

After a motion for a temporary restraining order or a preliminary injunction is filed and opposing counsel has been served, the court generally conducts a telephone conference with counsel to discuss procedural matters, such as briefing and the need for a hearing. If the case is assigned to a magistrate judge and a TRO is being pursued, the court will contact the district judge on duty that month to handle the TRO. The case is then transferred back to the magistrate judge for further case management. In cases assigned to a magistrate judge, the magistrate judge hears motions for a preliminary injunction.

E. Continuances. (Practice re granting; preferred procedures.)

A trial continuance is rarely granted, except in extraordinary circumstances. Stipulations, with proposed orders, for rescheduling other matters will be given prompt attention.

F. Briefing schedules. (Any special preferences or rules?)

Parties should follow the local rules regarding briefing. See Local Rule 6.

G. Oral argument. (When desired, when unnecessary? Will oral argument on motions be granted if a party requests it? Under what circumstances? Any provision for identifying particular questions for argument? Any tentative ruling procedure? Any time limits? Preferred procedure for presenting new authorities not included in briefs?)

Oral argument on dispositive motions is the exception, not the rule, except for preliminary injunction motions, or on Social Security appeals where parties are represented by counsel. Court may hear oral argument on certain non-dispositive

motions brought pursuant to Local Rule 6.07.

H. Motion papers and briefs. (Extra copies desired? Particular format preferred? Special length provisions? Contacts with law clerks encouraged, discouraged?)

Local Rules set out requirements for motions and briefs. If counsel has questions, contact the deputy clerk or court's chambers.

I. Should motion papers and briefs be filed in chambers, in the clerk's office, or both?

All motions and briefs should be filed in the Clerk's office, except if otherwise directed by the court.

J. Preparation of proposed orders after rulings. (When submitted, by whom, preferred procedures re obtaining opposing counsel's approval as to form?)

Proposed orders are submitted only when requested by the court.

K. Other comments?

III. General Duty Judge -- Special Proceedings

A. Preferred procedures for scheduling matters in General Duty department. (Call clerk? Regular calendar? Orders shortening time and emergency matters -- practice; ex parte vs. stipulation; notice to opposing counsel.)

N/A to magistrate judges.

B. Evidentiary hearings. (How to schedule, preferred practice?)

N/A to magistrate judges.

IV. Criminal Law Procedures

A. Days, times for calendar.

Each magistrate judge in the Eastern District of Wisconsin is "on duty" every third month. The duty magistrate judge handles arraignments and pleas which are normally scheduled for Friday mornings.

Petty offenses proceedings are conducted by the duty magistrate on the third Monday of every month at 9:00 a.m.

All other matters are scheduled as needed and as promptly as possible.

B. Procedures for scheduling. (Scheduling orders; how firm are dates initially set? Preferred method of changing dates, continuances; conflict between criminal trial date and civil trial already set.)

Motions for continuance of a felony trial are to be submitted in writing and directed to the district court judge who is assigned the case. On misdemeanor matters tried before the magistrate judge, counsel should file a written motion for continuance directed to the magistrate judge.

Scheduling of criminal matters is handled by the deputy clerk in the Clerk of Court's Office, and inquiries should be directed to the deputy clerk.

To change dates for filing motions and any dates other than a trial date, counsel should file a written motion to reschedule. Depending upon the circumstances and urgency, a request may be made by telephone conference call with counsel for both parties participating. Counsel should still file a written motion following the oral request.

Evidentiary hearings are generally scheduled in consultation with the parties and will not be rescheduled if it would result in changing the trial date.

C. Bail procedures.

1. When, by whom are initial bail determinations made; preferred method, content of presentation (proffer or live witnesses)

Initial bail is set by the duty magistrate judge. The Pretrial Services Office generally prepares a pretrial report.

2. Procedure for appeal of Magistrate Judge's ruling on bail issues.

A request for modification or reconsideration of bail will be heard by the magistrate judge who initially established the conditions of release or detained the defendant, even if a different magistrate judge is assigned to process pretrial matters. The district judge assigned to the case will hear any bail appeal.

3. Procedure for obtaining exemption from bail conditions (trip out of town) or modification of bail provisions.

Counsel seeking a modification of bail should file a written motion with the magistrate judge who set bond and include a statement setting forth the position of the Assistant United States Attorney and the Pretrial Services Officer handling the case. Depending on the circumstances, the court may schedule a hearing.

For other requests, such as travel, counsel should write a letter to the magistrate judge setting forth the specific request, including a statement of the position of the Assistant United States Attorney and the Pretrial Services Officer handling the case. Involvement of the pretrial services office is critical if the defendant is subject to electronic monitoring.

D. Speedy Trial Act motions and orders. (Will Court accept stipulation between Government and counsel re Speedy Trial Act time exclusion, or complex case designations? If not, how, when determined?)

Motions for Speedy Trial Act time exclusions in felony cases are generally heard by the district judge.

E. Criminal evidentiary/suppression hearings. (Procedures to calendar evidentiary hearings; proffers, declarations or affidavits vs. live testimony; statements of contested and uncontested facts and issues.)

See Local Rule 6.03 (E.D. Wis.). See also, Pre-Trial order attached.

F. Oral argument. (Ever considered unnecessary? Any provision for identifying particular issues for argument? Any tentative ruling system? Time limits? Preferred practice for submitting newly discovered authorities?)

Oral arguments are normally not scheduled. The parties may be given a short period of time to submit post-hearing briefs after an evidentiary hearing. When time constraints will not permit briefing, the magistrate judge may hear oral argument.

G. Motion papers and briefs. Timing on filing briefs and motions in limine. (Extra copies desired? Particular format preferred? Contacts with law clerks encouraged, discouraged?)

Motions and briefs — an original and one copy — are filed in the Clerk of Court's office. Briefing schedules for pretrial motions are set at the arraignment. The briefing schedule set forth in Local Rule 6.01(b) is not applicable to criminal cases.

H. Trial briefs, jury instructions, forms of verdict. (When required from defense, preferred format and sequence, etc.)

In misdemeanor cases, a final pretrial conference will be held approximately ten days prior to trial. Proposed voir dire questions and proposed jury instructions are to be submitted at the final pretrial conference.

The assigned district judge sets procedures in felony cases.

I. Pretrial conferences. (When, how scheduled; preferred procedures?)

Pretrial conferences are conducted approximately ten days before the trial. The date of the pretrial conference is announced at the arraignment.

J. Discovery. (Deadlines; motions necessary? “Open-file” discovery practices? Reciprocity? Timing re Jencks Act and Rule 404(b) disclosures.

The government usually follows its "open file" policy. At the arraignment, counsel for the government is asked if the government will be following that policy and when discovery materials will be available. Discovery is governed by procedures of the pretrial order (see attached).

K. Entering pleas.

1. Procedure preferred re presentation of factual basis, terms of any plea bargain; when is written plea required/preferred? Will the defendant be sworn and subject to questioning at plea hearing?

Pleas in felony cases are heard by the district judge assigned to the case.

In misdemeanor cases, the magistrate judge requires the plea agreement to be in writing and filed before the plea date. Once the plea is filed, the court schedules a date for taking the plea. At the plea hearing, the court will order a presentence report and set a date for sentencing. In exceptional cases, the entry of the plea and sentencing may take place at a consolidated hearing.

2. Are nolo contendere or Alford pleas ever accepted?

Nolo contendere pleas are only accepted when good cause is shown.

L. Sentencing. (Does the judge confer with the probation officer without notice to and/or presence of counsel? Timing on objections to Presentence Report; must objections be in writing? Will the Court give notice of its intention to depart from the Guidelines -- opportunity to brief departure issues?)

The attorneys and the defendant read the pre-sentence report prior to sentencing. They must notify the probation department if there are any objections to the report. The probation agent notifies the magistrate judge of objections to factual matters in the report prior to the sentencing hearing. Efforts will be made at the sentencing hearing to resolve any disputes. The Sentencing Guidelines apply to all felonies and certain misdemeanors.

M. Other comments?

An attorney should not accept a federal criminal case without being well versed in the application of the Sentencing Guidelines.

V. Pretrial and Trial

- A. Pretrial reports - civil. (Joint vs. separate; amount of detail; any areas of particular interest to Court? Does the judge have his own form of pretrial order, does he use a standard form prescribed for use in the court as a whole, or does each case have a customized order?)**

Local Rule 7.06 (E.D. Wis.) sets out the pretrial report generally utilized in this district.

Magistrate Judge Gorence also issues a pretrial order in each case which proceeds to trial. (See attached). The pretrial order will vary with *pro se* litigants.

- B. Identification of trial witnesses. (How much detail required in statements; any flexibility in application; expert witnesses? Can witness identified as “live” be presented through deposition?)**

See Pretrial Order.

- C. Motion cut-off date and discovery cut-off date. (What are normal limits; under what circumstances are these dates altered?)**

Motion deadlines and discovery cut-off dates are set at the initial scheduling conference in consultation with counsel. Dates can be changed if good cause is shown.

- D. Trial continuances. (What grounds acceptable, necessary; cut-off time for motion; effect of stipulation among counsel?)**

Continuances of a trial are granted only under extraordinary circumstances.

- E. Are time limits imposed for trial?**

No. However, at the final pretrial conference, counsel will be asked for a realistic estimate as to the length of trial. The time reserved for the trial and its supervision will be governed by that estimate.

F. Are mini-opening statements and summations permitted?

This depends on the estimated length of trial and the complexity of issues.

G. Trial exhibits:

1. Pre-marking. (When required; civil vs. criminal.)

The parties are to pre-mark their exhibits in both civil and criminal cases. Parties in civil cases are encouraged to submit joint exhibits whenever possible. Numbering of exhibits will be consecutive, e.g., joint exhibits, 1-100; plaintiff's exhibits, 101-200; defendant's exhibits, 201-300.

The parties are also required to prepare lists of their exhibits using a standard format and provide copies to the court and opposing counsel.

2. Pretrial exchange of trial exhibits. (How required; must copies be provided to other side?)

Counsel will be asked at the final pretrial conference if there has been an exchange of trial exhibits. Parties are required to confer regarding use of joint exhibits.

3. Pretrial resolution of objections to admissibility.

Motions in limine prior to trial are preferred. Matter will be discussed at final pretrial conference.

4. Marking -- numbering, lettering, conventions.

See G.1 above

5. Copies of exhibits for judge. (Required? If so, what format -- loose, binders, etc.)

Copies of exhibits should be provided to the court. Binders are preferable for numerous exhibits.

6. Use in opening statement -- necessity to obtain prior court approval.

Court approval is necessary to use exhibits in an opening statement. This issue should be raised at the final pretrial conference.

7. Copies of exhibits for jurors? (Required/allowed? If so, what format -- loose, binders, all vs. fewer than all?)

Parties should raise this issue for discussion at the final pretrial conference.

8. Exhibits into jury room? (How decided; general rule?)

Generally, exhibits are sent to the jury room unless there is good cause for not doing so. Issue is discussed at the close of the evidence.

9. Preferences re scheduling and briefing in limine motions?

The scheduling and briefing of motions in limine should be raised at or before the final pretrial conference.

H. Experts at trial

1. Exchange of identities. (When, how requested; civil vs. criminal.)

See Pretrial Report, Local Rule 7.06. Disclosure of experts is a requirement of the discovery process. See Local Rule 7.07(d). The court generally sets a date for disclosure of expert witnesses at the initial scheduling conference.

2. Exchange of reports or summaries of testimony.

The court generally requires the expert's report to be available at the time the expert is named. See Local Rule 7.07(d).

3. Voir dire re qualifications (preferred procedures).

Stipulations to expert qualifications are preferred. Otherwise, counsel may voir dire the expert at trial.

4. Any special rules re presentation to jury? (Summaries in lieu of direct testimony, etc.)

None.

5. Other comments?

I. Jury selection process.

1. Voir dire questions.

Questions are to be submitted by counsel with the final pretrial report. See Local Rule 7.06.

2. Examination of jurors. (Court vs. counsel upon request of counsel.)

Examination of jurors is done by the court. At the conclusion of the court's voir dire, counsel will be given the opportunity to suggest limited follow-up questions. Voir dire procedure is discussed at the final pretrial conference.

3. Exercise of challenges.

Challenges are made off of the jury list.

4. General practice. (How many called up at a time; general questions to whole panel, etc.)

Procedures in jury selection will be discussed at the final pretrial conference.

J. Juror note taking during trial. (Allowed? prohibited? cautionary instructions?)

Jury note taking may be permitted depending upon the nature of the case. This issue

should be raised at the final pretrial conference.

K. Visual aids during trial (charts, videos, models, computer generated exhibits).

Yes. Counsel should discuss the planned use of visual aids at the final pretrial conference.

1. Use in opening statements. (Need for judicial approval? limitations? conditions on use?)

Court approval is necessary for the use of visual aids in opening statements. This should be raised at the final pretrial conference.

2. Stipulations/pretrial exchange required?

Opposing counsel should be apprised of the planned use of visual aids prior to trial. Pretrial exchange is encouraged to minimize delays during trial.

3. Court permission required during trial? (When, how, any limit on types of visual aids?)

Topic should be raised at the final pretrial conference.

L. Deposition testimony at trial. (Preferred practice; who reads what parts, etc.)

If a party intends to use deposition testimony at trial, designations of such testimony are to be included in final pretrial report. See Local Rule 7.06. Opposing counsel will be permitted to submit counter-designations, if necessary.

At trial, it is preferable to have someone answer the deposition questions from the witness stand.

M. Jury instructions.

1. Format, preferred sources.

See Pretrial Order. Submit each proposed substantive instruction on a separate page with the source and/or authority cited at bottom of page.

2. Does judge have own preferred instructions? (If so, are they required? When are they provided to counsel?)

Yes, Magistrate Judge Gorence has standard preliminary instructions and non-substantive jury instructions which will be provided to the parties prior to trial.

3. Hearing re objections and making record.

Court conducts an instruction conference. Counsel are afforded the opportunity to place their objections on the record.

4. When is jury instructed? (Any pre-instruction at commencement of case? Before or after argument, or both?)

The jury is given preliminary instructions at the commencement of the case. The jury normally is instructed after closing arguments, but the parties can discuss this at the final pretrial conference.

5. How is jury instructed? (Orally only? Are transparencies of the instructions used as the judge reads? Are copies of instructions given to jurors during deliberation?)

The court orally instructs the jury and copies of the court's instructions are given to the jury at the commencement of their deliberations.

N. Closing argument -- ground rules. (Where to stand; what can be used, e.g., exhibits, blowups of instructions, blowups of trial testimony; preferred method of handling objections during argument; any special rules re what can be said about instructions; time limits?)

Counsel should stand at the podium during closing arguments. Counsel will be asked for an estimate of the length of their closings and flexible time limits will be set accordingly. The standard — reasonableness.

VI. Discipline and Sanctions

A. Civil matters -- Rules 11, 16, 26, etc.

Sanctions may be utilized when appropriate.

B. General sanctions under 28 U.S.C. 1927 (when imposed, what sort of hearing held, what types of notice given?)

The court addresses motions for sanctions by report and recommendation to the district judge. See 28 U.S.C. § 636(e)

C. Criminal matters.

The defendant will not be handcuffed in court unless he or she poses a security risk.

VII. Settlement and Sentencing

A. Civil settlement conferences.

1. When, how set? (Routinely? Only as requested? At what stage of the proceedings? How many times?)

Assistance with settlement will be discussed with counsel at the initial scheduling conference. Upon request of the parties, appropriate arrangements will be made for a settlement conference or mediation at almost any time during the course of the litigation.

When a settlement conference is requested in a consent case, another magistrate judge is asked to conduct the conference. In a case where the parties have not consented to magistrate judge jurisdiction, Magistrate Judge Gorence will conduct the settlement conference or mediation.

2. Before whom? (Trial judge? Magistrate Judge? Another district judge?)

The magistrate judges conduct settlement conferences for the district judges and for the other magistrate judges. When the parties have consented to magistrate judge jurisdiction in a case assigned to Magistrate Judge Gorence, she will refer the case to another magistrate judge for a settlement conference.

3. **Settlement conference statements, procedures. (Written statements required/desired? Are they filed? Must clients be present? What format for conference? Use of computer-generated and video materials at conference?)**

A settlement conference statement is required at least ten days prior to the date of the conference. Persons with authority to settle the case are required to attend the conference in person or, if warranted, be readily available by telephone. The conference is similar to mediation. The judge will meet initially with all parties and then separately with each party.

4. **Any special procedures? (Early Neutral Evaluation? Special arbitration procedures? Mediation? Rent-a-judge? Mini-trial?)**

While mediation is the normal format, other alternative dispute resolution, including a summary jury trial, will be considered.

B. Criminal matters.

1. **Sentencing memoranda (preferences).**

Sentencing memoranda are not required.

2. **Resolution of factual disputes on sentencing.**

Any factual disputes concerning matters relevant to sentencing should be made known to the magistrate judge in advance of the sentencing hearing. This is done through the probation department, specifically the probation

agent assigned to the case. The parties should attempt to resolve disputes prior to the hearing.

VIII. Ex Parte Communications

A. Communications between Court and party. (Any circumstances when permitted; clerk/law clerk involvement?)

Communications between the court and a party are not permitted.

B. Communications between Court and state court on related cases.

This depends on the particular case and matters under consideration.

C. Differences between civil and criminal?

Certain criminal matters are, by their nature, done only with one party, such as applications for complaints, search warrants, trap and trace devices, and requests for investigative services by Criminal Justice Act (CJA) attorneys.

IX. Any other comments?

The court proceeds on the basis that counsel are familiar with the Local Rules. Certain practices and procedures within the court may change or be modified based on the particular circumstances of a case. If counsel have particular concerns, they may contact the deputy clerk in the clerk of court's office or chamber's staff regarding procedural matters.